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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,459	07/14/2005	Ludwik Leibler	FR-AM1914 NP	2641
31684	7590	08/21/2007		
ARKEMA INC. PATENT DEPARTMENT - 26TH FLOOR 2000 MARKET STREET PHILADELPHIA, PA 19103-3222			EXAMINER MULLIS, JEFFREY C	
			ART UNIT	PAPER NUMBER
			1711	
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			08/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/542,459	Applicant(s) LEIBLER ET AL.	
	Examiner Jeffrey C. Mullis	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7-14-05</u> | 6) <input type="checkbox"/> Other: _____ |

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Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not disclose how to make applicants block copolymers having the recited specific level of syndiotacticity and since there are various choices and levels of stereoregularity possible from any polymerization it is not clear what process could be used to make applicants block copolymer component of claim 6.

Claims 1-11, 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what is meant by a block which is "partially" composed of PMMA in that additional monomer other than methyl methacrylate in the PMMA block would result in a copolymeric block comprising methyl methacrylate, not PMMA while additional monomer not copolymerized with methyl methacrylate would result in a second block. This is contradictory. It is suggested that "poly(methyl methacrylate)" be replaced with "methyl methacrylate" if this is what is intended.

The term "short" as appears in at least claim 5 is subjective and therefore unclear.

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Claim 10 is unclear in that "polyamides" are recited despite claim 1 from which this claim depends already recites polyamide.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6, 7-11, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruzette et al.

It is noted that the above document corresponds to (US 2006/0063891) and since the US document is in English it will be referred to.

Ruzette discloses a composition containing greater than 50% matrix polymer such as polyamide in combination with a block copolymer such as triblock copolymer (claims 5 and 26). Note the examples where the block copolymer is a triblock copolymer with terminal PMMA blocks and non terminal polybutyl acrylate blocks.

While no actual examples of applicants composition are present in the document, to arrive at applicants composition by selecting from the various disclosures of the reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 5, 6, 7-11, 15 and 16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of copending Application No. 10/502,216. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims overlap.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-11, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kakeda et al. (WO 200292696).

It is noted that the above patent corresponds to US 2004/0147674 which will be referred to as the US publication is in English.

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Examples 3, 4 and 5 on page 24 disclose applicants composition except that Kakeda uses somewhat less polyamide than applicants. Note that paragraph 22 of Kakeda discloses that higher amounts of thermoplastic may be used.

While no actual examples of applicants composition are present in the document, to arrive at applicants composition by selecting from the various disclosures of the reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results.

Claims 1-11, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuji et al. (WO 200281561).

It is noted that the above patent corresponds to US 2004/0106732 and since this publication is in English it will be referred to.

Tsuji discloses a composition produced by compounding a thermoplastic and an acrylate/methacrylate block copolymer (Abstract) such as applicants specific triblock (paragraph 154) in which the thermoplastic may include polyamide in applicants amounts (paragraphs 32 and 33). Butadiene may be present at paragraph 85 and rubber may be added in paragraphs 213-214.

While no actual examples of applicants composition are present in the document, to arrive at applicants composition by selecting from the various disclosures of the reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results.

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Any inquiry concerning this communication should be directed to Jeffrey C. Mullis
M-F, 9-5pm at telephone number 571 272 1075.

Jeffrey C. Mullis
Primary Examiner
Art Unit 1711

JEFFREY C. MULLIS
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GROUP 1200

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